No.

IN THE SUPREME COURT OF THE UNITED STATES

October Term, 1990

HENRY J. FANT, Petitioner

vs.

BENNY BONANNO, Clerk
Cleveland Municipal Court,
Respondent.

ON WRIT OF CERTIORARI TO THE
SUPREME COURT OF OHIO

PETITION FOR WRIT OF CERTIORARI

HENRY J. FANT
P. O. Box 14833
Cleveland, Ohio 44114

Petitioner, pro se

QUESTIONS PRESENTED FOR REVIEW

THE QUESTIONS PRESENTED IN THIS PETITION IS WHETHER OR NOT THE SUPREME COURT OF OHIO DENIED PETITIONER FANT THE EQUAL PROTECTION OF THE LAW BY SUMMARILY DISMISSING PETITIONER'S COMPLAINT FOR WRIT OF MANDAMUS FILED IN THE SUPREME COURT OF OHIO.

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IN THE SUPREME COURT OF THE UNITED STATES

October Term, 1990

No._____

HENRY J. FANT, Petitioner

vs.

BENNY BONANNO, Clerk
Cleveland Municipal Court,
Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF OHIO

To the honorable, the Chief Justice and Associate Justices of the Supreme Court of the United States: Henry J. Fant, **pro se**, the petitioner herein, prays that a writ of certiorari issue to review the judgment of the Supreme court of Ohio entered in the above entitled case on September 6, 1989 **sua sponte** dismissing petitioner's original complaint for **writ of mandamus.**

OPINION BELOW

The "ENTRY" of the Supreme Court of Ohio is reproduced at Appendix A, page 1a and is reported in the Ohio Official Reports Advance Sheet, Vol. 3, Sept. 18, 1989, 45 Ohio St.3d 707.

JURISDICTION

The "ENTRY" of the Supreme Court of Ohio (infra, page 1a) was entered on September 6, 1989. The petition for writ of certiorari was timely received by the Clerk of this Court on December 5, 1989 but was returned to petitioner Fant by the Clerk for corrections and was received by petitioner Fant on December 13, 1989. Petitioner was allowed 21 days from receipt to submit corrected copies of the petition.

Petitioner Fant is a native born citizen of the United States and resides in the state of Ohio. This case involves the first section of the Fourteenth Amendment to the Constitution of the United States which pro-

vides as follows:

> "All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty or property, without due process of law, nor deny to any person within its jurisdiction the equal protection of the law."

STATUTES INVOLVED

The statutes involved are the Ohio Public Records Law, being §149.43(A), §149.43(B), §149.43(C), §149.43(D), §3 of 149.43, and §5 of 149.43 of the Ohio Revised Code, and is printed at Appendix B, page 2a.

STATEMENT OF THE CASE

On July 5, 1989 Henry J. Fant (petitioner), filed an original complaint for writ of mandamus in the Supreme Court of Ohio against Benny Bonanno, clerk of the Cleveland Municipal Court (respondent), seeking to compel respondent Bonanno to grant the petitioner permission to inspect and/or make copies

of the contents of the personnel file of M. Daniels, a subordinate employee of respondent Bonanno, pursuant to the mandate of §149.43 of the Ohio Revised Code.

Under date of August 4, 1989, the respondent mailed to petitioner Fant copies of what the respondent claimed is:

> " ... the entire personnel file of Michele Daniels, with only the following items redacted for the personal safety and privacy of Ms. Daniels: the social security number, the W-4 tax form, **home address** and telephone numbers, and the P.E.R.S personal history form." (Emphasis added.)

By letter dated August 11, 1989, petitioner Fant advised the respondent that he may not lawfully conceal the home address of Michele Daniels. (Appendix E, Exhibit B)

The respondent **filed** his answer on August 8, 1989. (Emphasis added.) Petitioner Fant had not received a copy of the respondent's answer as of August 21, 1989 at which **time petitioner's brief was filed in the Supreme Court of Ohio by way of the U.S. mail.**

Petitioner Fant learn from a long-distance telephone call to the clerk of the Supreme Court of Ohio on September 7, 1989 that the respondent's answer was filed on August 8, 1989. Subsequently, petitioner personally obtained a copy of the respondent's answer from Gary N. Travis, one of the attorneys for respondent Bonanno.

The respondent's alleged affirmative defenses set forth in his answer are:

> "(A) The complaint fails to state a claim upon which relief can be granted.
>
> (B) The issues set forth in the complaint are moot, and,
>
> (C) Relator has an adequate remedy at law."

On September 6, 1989 the Supreme Court of Ohio filed an "ENTRY" in which the court **sua sponte** treated the answer of the respondent as a motion to dismiss, "an as such, said motion be, and the same is hereby sustained." It is from said "ENTRY" that the petitioner herein petition this honorable court for a writ of certiorari to the Supreme

Court of Ohio. (Appendix A, page 1a.)

REASONS FOR GRANTING REVIEW

The **sua sponte** conversion of the respondent's answer into a motion to dismiss is clearly an attempt by the court below to avoid writing an opinion and awarding costs for the complaint clearly states a cause of action upon which a court may grant relief. Furthermore, the issue set forth in the complaint is not moot and relator's discretionary "adequate remedy at law" is set forth in R. C. 149.43(C). (See Appendix B, page 3a.)

Further evidence of the intent of the Ohio General Assembly is set forth in §3 of R. C. 149.43. (See Appendix B, page 3a,)

The Supreme Court of Ohio failed to follow its own rules and precedents in the case **sub judice.** For examples, under Rule VIII of the Ohio Supreme Court Rules of Practice:

> "An original action ... shall be instituted by the filing of a complaint ... and such action **shall**

> **proceed** as any civil action under the Ohio Rules of Civil Procedure." (Emphasis added.)

There is nothing in Rule VIII about **sua sponte** converting an answer into a motion to dismiss.

Section 4 of Rule VIII of the Ohio Supreme Court states that:

> "Where a motion to dismiss is filed, eighteen copies of a brief in support of such motion **must** be filed with such motion." (Emphasis added.)

The respondent never filed a motion to to dismiss. The Supreme Court of Ohio **sua sponte** treated the respondent's answer as a motion to dismiss in order to avoid having to decide the issue before the court as set forth in relator's brief. (See Appendix E, page 20a.)

The Ohio Rules of Civil Procedure under which the court below should have been proceeding in this original action clearly prescribe the proper procedures to follow in dismissing a complaint for whatever reasons.

The Supreme Court of Ohio established the test for determining whether to dismiss a complaint for failure to state a claim upon which relief can be granted in **O'Brien v. University Community Tenants Union** (1975), 42 Ohio St.2d 242 in which the court said in the syllabus:

> "In order for a court to dismiss a complaint for failure to state a claim upon which relief can be granted (Civ. R. 12(B)(6)), it must appear beyond doubt **from the complaint** that the plaintiff can prove no set of facts entitling him to recovery. (**Conley v. Gibson**, 355 U.S. 41 followed.)"
>
> (Emphasis added.)

Further, said the court in **O'Brien,supra** at page 45:

> "In appraising the sufficiency of the complaint we follow, of course, the accepted rule that a complaint should not be dismissed for failure to state a claim unless it appears beyond doubt that the plaintiff can prove no set of facts in support of his claim which would entitled him to relief."

Followed in **Petrey v. Simon** (1983), 4 Ohio St.3d 154,156.

A judge speak as the court only through

the journal of the court. **Carter v. Johnson** (1978), 55 Ohio App.2d 157, paragraph 2 of the syllabus. The summarily dismissal of petitioner's complaint by the Supreme Court of Ohio leaves no choice except to speculate as to the reasons. A motion to dismiss test only the sufficiency of the complaint and may not be used to terminate litigation on its merit. **Slife v. Kundtz Properties** (1974), 40 Ohio App.2d 179,182; **Barnes v. Continental Acceptance Corp.** (1977), 4 003d 232,236 (App.).

To look beyond the face of the complaint, the court is mandated to convert a Civ. R. 12(B)(6) motion to dismiss into a Civ. R. 56(C) motion for summary judgment which requires due notice to the adverse party, a date certain for hearing and an opportunity to file opposing affidavits. **Petrey, supra,** paragraph 1 and 2 of the syllabi; **W.D.G. Inc. v. Mutual Mfg. & Supply Co.** (1975), 5 003d 397,399 (App.);

Federated Dept. Stores, Inc. v. Lindley (1987), 30 Ohio St.3d 135, 137.

Petitioner Fant's complaint sufficiently set forth and meets the Civil Rule requirements of Rule 8(A). All Civil Rule (8) require is "a short and plain statement of the claim showing that the pleader is entitled to relief, and a demand for judgment for the relief to which he deems himself entitled." **Stephens v. Boothby** (1974), 40 Ohio App.2d 197,198; **Salyers v. Burkhart** (1974), 47 Ohio App.2d 90,91; **Fobis v. Springfield Township Trustees** (1978), 56 Ohio App.2d 249, 252.

As shown on page 20a of the petitioner's brief filed in the case, the only issue to be decided by the court is the question of whether or not the home address of Michele Daniels, a public employee, is a public record subject to disclosure within the definition set forth in R. C. 149.43(A)(1).

The Supreme Court of Ohio said in **State ex rel. Natl. Broadcasting Co. v. Cleveland** (1988), 38 Ohio St.3d 79, paragraph 2 of the syllabus, that:

> "A governmental body refusing to release records has the burden of proving that the records are excepted from disclosure by R. C. 149.43."

Further, said the court in the same case at syllabus 4 that:

> "When a governmental body asserts that public records are excepted from disclosure and such assertion is challenged, the court **must** make an individualized scrutiny of the record in question. If the court find that the record contain excepted information, this information **must** be redacted and any remaining information **must** be released." (Emphasis added.)

Followed in **Fostoria Daily Review Co. v. Fostoria Hosp. Assn.** (1988), 40 Ohio St.3d 13.

In **State, ex rel. Natl. Broadcasting Co., supra** at pages 82-83, the Ohio Supreme Court noted that:

> "The federal courts have consistently held that the government bears the burden of proving that material

> withheld from disclosure falls within an exception of the Freedom of Information Act ... *** We agree."

Citing **Currie v. Internal Revenue Serv.** (C. A. 11, 1983), 704 F.2d 523; **Exxon v. Fed. Trade Comm.** (C.A.D.C.1980), 663 F.2d 120; **Kuehnert v. FBI** (C.A. 8, 1980) 620 F.2d 662.

Thus, the law in Ohio in respect to the burden of proving exceptions to the public records law is the same as in the federal jurisdictions and may not be unlawfully denied to petitioner Fant on the authority of the Fourteenth Amendment to the Constitution of the United States.

Accordingly, the Supreme Court of Ohio may not avoid requiring the respondent to prove that Michele Daniels' home address is excepted from public disclosure. The home address of the mayor of Cleveland is public; the home address of the governor of Ohio is public; the home address of President Bush is public; the home address of respondent

Bonanno is public; yet, Michele Daniels, whose residency is a condition precedent to employment in the classified or unclassified civil service, claims exceptions to the Ohio Public Records Law.

The respondent has not proved that the home addresses upon the public records furnished to petitioner Fant may lawfully be redacted nor has the Supreme Court of Ohio made "an individualized scrutiny of the records in question." The Supreme Court Ohio, therefore, has denied to petitioner Fant the equal protection of the law in violation of Section 1 of the Fourteenth Amendment to the Constitution of the United States by failing to accord to petitioner Fant the equal protection of its own interpretations of R. C. 149.43.

The laws of Ohio may not be enforced one way for the Natl. Broadcasting Co.,and enforced a contrary or inconsistent way for petitioner Henry J. Fant, a pro se litigant.

The Fourteenth Amendment command the states to accord equal protection of the laws to all its citizens therein. This, the Supreme Court of Ohio have failed to do in the case **sub judice.**

The Supreme Court of Ohio have decisively decided in two separate cases that the home addresses of retirees members of the Public Employees Retirement System is subject to public disclosure. **State, ex rel. Public Employees Retirees v. PERS** (1979), 60 Ohio St.2d 93,94; **Police & Fire Retirees of Ohio, Inc. v. Police & Firemen Disability & Pension Fund** (1985), 18 Ohio St.3d 231,233. In the latter case at page 233, the court said:

> " ... that the names and addresses of the Fund's members are public records not specifically exempt from public inspection, and grant a writ of mandamus directing respondents to make those names and addresses available to relator."

Furthermore, In **State, ex rel. Cincinnati Post v. Schweikert** (1988), 38 Ohio St. 3d 170, paragraph 1 of the syllabus, the Su-

preme Court of Ohio said:

> "The Public Records Law, R. C. 149.43, does not exempt compilations of information contained in public records and does not require members of the public to exhaust their energy and ingenuity to gather information which is already compiled and organized in a document created by public officials."

Moreover, if we hold **arguendo** that the court below considered matters outside the pleading, the court erred prejudicial to petitioner Fant on the grounds that:

> "When a motion to dismiss under Civ. R. 12(B)(6) is founded on matters outside the pleading, the trial court is obligated to treat the motion to dismiss as one for summary judgment and dispose of it as provided in Rule 56."

Franternal Order of Police v. D'Amico (1982), 4 Ohio App.3d 15; **Carter v. Stanton** 405 U. S. 669,671 (1972).

The emergency passage of the repeal of R. C. 149.99 and amendments to §149.351 and §149.43 reflect the public interest in Ohio Public Records Law. Further evident of great public interest are reflected in the numerous **amicus curiae** briefs filed in both of the **Fostoria Daily Review Co.**, cases,supra,infra

page 4a. Section 5 of amended R. C. 149.43 (Appendix, page 4a) makes clear the intent of the Ohio General Assembly on behalf of the people of Ohio.

CONCLUSIONS

The Supreme Court of Ohio denied petitioner Fant the equal protection of the law. It is imperative that this honorable Court uphold the equal protection mandate of the Fourteenth Amendment to the Constitution of the United States.

Respectfully submitted,

Henry J. Fant

HENRY J. FANT, pro se
P. O. Box 14833
Cleveland, Ohio 44114

Dated, December 28, 1989

APPENDIX

APPENDIX A

THE SUPREME COURT OF OHIO

1989 TERM

To wit: September 6, 1989

State of Ohio, ex rel. Henry J. Fant, Relator,	:	Case No. 89-1157
v.	:	IN MANDAMUS
Benny Bonanno, Clerk, Respondent.	:	ENTRY

This cause originated in this Court on the filing of a complaint for writ of mandamus and was considered in a manner prescribed by law. Upon consideration thereof,

IT IS ORDERED by the Court that respondent's answer be treated as a motion to dismiss, and as such, said motion be, and the same is hereby, sustained.

IT IS FURTHER ORDERED by the Court that this cause be, and the same is hereby, dismissed.

/S/
THOMAS J. MOYER
Chief Justice

APPENDIX B

(Amended Substitute Senate Bill Number 275)

AN ACT

To amend sections 149.351 and 149.43 and to repeal section 149.99 of the Revised Code relative to the availability of the remedy of mandamus to enforce the public records law, and to declare an emergency.

Be it enacted by the General Assembly of the State of Ohio:

SECTION 1. That sections 149.351 and 149.43 of the Revised Code be amended to read as follows:

Sec. 149.351. (A) All records ~~as defined in section 149.011 of the Revised Code~~ are the property of the public office concerned and shall not be removed, destroyed, mutilated, transferred, or otherwise damaged or disposed of, in whole or in part, except as provided by law or under the rules adopted by the records commissions provided for under sections 149.38 to 149.42 of the Revised Code. Such records shall be delivered by outgoing officials and employees to their successors and shall not be otherwise removed, transferred, or destroyed unlawfully.

(B) ANY PERSON WHO IS AGGRIEVED BY THE REMOVAL, DESTRUCTION, MUTILATION, OR TRANSFER OF, OR BY OTHER DAMAGE TO OR DISPOSITION OF A RECORD IN VIOLATION OF DIVISION (A) OF THIS SECTION, OR BY THREAT OF SUCH REMOVAL, DESTRUCTION, MUTILATION, TRANSFER, OR OTHER DAMAGE TO OR DISPOSITION OF SUCH A RECORD, MAY COMMENCE EITHER OR BOTH OF THE FOLLOWING IN THE COURT OF COMMON PLEAS OF THE COUNTY IN WHICH DIVISION (A) OF THIS SECTION ALLEGEDLY WAS VIOLATED OR IS THREATENED TO BE VIOLATED:

(1) A CIVIL ACTION FOR INJUNCTIVE RELIEF TO COMPEL COMPLIANCE WITH DIVISION (A) OF THIS SECTION, AND TO OBTAIN AN AWARD OF THE REASONABLE ATTORNEY'S FEES INCURRED BY THE PERSON IN THE CIVIL ACTION;

(2) A CIVIL ACTION TO RECOVER A FORFEITURE IN THE AMOUNT OF ONE THOUSAND DOLLARS FOR EACH VIOLATION, AND TO OBTAIN AN AWARD OF THE REASONABLE ATTORNEY'S FEES INCURRED BY THE PERSON IN THE CIVIL ACTION.

Sec. 149.43. (A) As used in this section:

(1) "Public record" means any record that is kept by any public office, including, but not limited to, state, county, city, village, township, and school district units, except medical records, records pertaining to adoption, probation, and parole proceedings, records pertaining to actions under section 2151.85 of the Revised Code and to appeals of actions arising under that section, records listed in division (A) of section 3107.42 of the Revised Code, trial preparation records, confidential law enforcement investigatory records, and records the release of which is prohibited by state or federal law.

(2) "Confidential law enforcement investigatory record" means any record that pertains to a law enforcement matter of a criminal, quasi-criminal, civil, or administrative nature, but only to the extent that the release of the record would create a high probability of disclosure of any of the following:

(a) The identity of a suspect who has not been charged with the offense to which the record pertains, or of an information source or witness to whom confidentiality has been reasonably promised;

(b) Information provided by an information source or witness to whom confidentiality has been reasonably promised, which information would reasonably tend to disclose his identity;

(c) Specific confidential investigatory techniques or procedures or specific investigatory work product;

(d) Information that would endanger the life or physical safety of law enforcement personnel, a crime victim, a witness, or a confidential information source.

(3) "Medical record" means any document or combination of documents, except births, deaths, and the fact of admission to or discharge from a hospital, that pertains to the medical history, diagnosis, prognosis, or medical condition of a patient and that is generated and maintained in the process of medical treatment.

(4) "Trial preparation record" means any record that contains information that is specifically compiled in reasonable anticipation of, or in defense of, a civil or criminal action or proceeding, including the independent thought processes and personal trial preparation of an attorney.

(B) All public records shall be promptly prepared and made available for inspection to any ~~member of the general public~~ PERSON at all reasonable times during regular business hours. Upon request, a person responsible for public records shall make copies available at cost, within a reasonable period of time. In order to facilitate broader access to public records, governmental units shall maintain public records in such a manner that they can be made available for inspection in accordance with this division.

(C) IF A PERSON ALLEGEDLY IS AGGRIEVED BY THE FAILURE OF A GOVERNMENTAL UNIT TO PROMPTLY PREPARE A PUBLIC RECORD AND TO MAKE IT AVAILABLE TO HIM FOR INSPECTION IN ACCORDANCE WITH DIVISION (B) OF THIS SECTION, OR IF A PERSON WHO HAS REQUESTED A COPY

OF A PUBLIC RECORD ALLEGEDLY IS AGGRIEVED BY THE FAILURE OF A PERSON RESPONSIBLE FOR IT TO MAKE A COPY AVAILABLE TO HIM IN ACCORDANCE WITH DIVISION (B) OF THIS SECTION, THE PERSON ALLEGEDLY AGGRIEVED MAY COMMENCE A MANDAMUS ACTION TO OBTAIN A JUDGMENT THAT ORDERS THE GOVERNMENTAL UNIT OR THE PERSON RESPONSIBLE FOR THE PUBLIC RECORD TO COMPLY WITH DIVISION (B) OF THIS SECTION AND THAT AWARDS REASONABLE ATTORNEY'S FEES TO THE PERSON THAT INSTITUTED THE MANDAMUS ACTION. THE MANDAMUS ACTION MAY BE COMMENCED IN THE COURT OF COMMON PLEAS OF THE COUNTY IN WHICH DIVISION (B) OF THIS SECTION ALLEGEDLY WAS NOT COMPLIED WITH, IN THE SUPREME COURT PURSUANT TO ITS ORIGINAL JURISDICTION UNDER SECTION 2 OF ARTICLE IV, OHIO CONSTITUTION, OR IN THE COURT OF APPEALS FOR THE APPELLATE DISTRICT IN WHICH DIVISION (B) OF THIS SECTION ALLEGEDLY WAS NOT COMPLIED WITH PURSUANT TO ITS ORIGINAL JURISDICTION UNDER SECTION 3 OF ARTICLE IV, OHIO CONSTITUTION.

(D) Chapter 1347. of the Revised Code does not limit the provisions of this section.

SECTION 2. That existing sections 149.351 and 149.43 and section 149.99 of the Revised Code are hereby repealed.

SECTION 3. It is the intent of the General Assembly in the enactment of new division (C) of section 149.43 of the Revised Code in Section 1 of this act to supersede the effect of the September 9, 1987 decision of the Ohio Supreme Court in State, ex rel. Fostoria Daily Review Co., v. Fostoria Hosp. Assn. (1987) 32 Ohio St. 3d 323 and to statutorily specify that a civil action for a writ of mandamus is available to obtain compliance with the Public Records Law.

SECTION 4. Any action in which a writ of mandamus is sought to compel compliance with section 149.43 of the Revised Code, or any appeal of such action, pending in any court as of the effective date of this act may proceed as if this division had been in effect at the time such action was filed.

SECTION 5. This act is hereby declared to be an emergency measure necessary for the immediate preservation of the public peace, health, and safety. The reason for the necessity is that, unless the effect of the recent decision of the Ohio Supreme Court in State, ex rel. Fostoria Daily Review Co., v. Fostoria Hosp. Assn. (1987) 32 Ohio St. 3d 323 is immediately superseded and a civil action for a writ of mandamus available in all courts with original jurisdiction reestablished as the remedy to enforce the Public Records Law, members of the general public could be denied access to public records in violation of the Public Records Law, and have no recourse other than to pursue an inadequate, statutorily prescribed remedy in the court of common pleas of injunctive relief, a forfeiture of $1,000, and a

reasonable attorney's fees award. Therefore, this act shall go into immediate effect.

Speaker _____ of the House of Representatives.

President _____ of the Senate.

Passed October 6, 1987

Approved Oct. 15, 1987
3:25 pm

Governor.

The section numbering of law of a general and permanent nature is complete and in conformity with the Revised Code.

Roger S. Ford

Director, Legislative Service Commission.

Filed in the office of the Secretary of State at Columbus, Ohio, on the 15th day of October, A. D. 19 87

Sherrod Brown

Secretary of State.

File No. 103 Effective Date October 15, 1987

APPENDIX C

IN THE SUPREME COURT OF OHIO

HENRY J. FANT P. O. Box 14833 Cleveland, Ohio 44114, Relator,	:	CASE No.89-1157
-vs-	:	
BENNY NONANNO, CLERK Cleveland Municipal Court Justice Center-Court Tower 1200 Ontario Street Cleveland, Ohio 44113, Respondent.	:	

COMPLAINT FOR WRIT OF MANDAMUS

1. Original jurisdiction of this court is invoked pursuant to Section 2 of Article IV, Ohio Constitution, and Section 149.43(C) of the Ohio Revised Code.

2. The respondent, Benny Bonanno,maintains his principal office as clerk of the Cleveland Municipal Court, Cuyahoga County, Ohio.

3. The office of the clerk of court of the Cleveland Municipal Court is a public office pursuant to the definition of Section 149.011(A) of the Ohio Revised Code.

4. On May 30, 1989, relator Henry J. Fant, made a certified mail #P829372838 request to the respondent, Benny Bonanno, for permission to inspect and/or make copies of the contents of the personnel file of M. Daniels, a subordinate employee of respondent Bonanno. Said request was constructively received by respondent Bonanno on June 1, 1989 as evident by Exhibit A and B attached hereto and made a part hereof.

5. The contents of the personnel file of M. Daniels are public records pursuant to the definition of R. C. 149.43(A)(1), except records therein, if any, that are expressly exempted from public disclosure by any federal or state law.

6. Pursuant to R. C. 149.43(B), "(a)11 public records shall be promptly prepared and made available for inspection to any person at all reasonable times during egular business hours. Upon request, a person responsible for public records shall make copies

available at cost, within a reasonable period of time."

7. Respondent Bonanno is the person responsible for the records of the office of the clerk of court of the Cleveland Municipal Court pursuant to the authority of Chapter 1901 of the Ohio Revised Code.

8. Because of the failure of the respondent Bonanno to make available for inspection or allow copies made of the public records requedted in relator's Exhibit A letter hereto, relator is entitled to a relief by this court, on the authority of R. C. 149.43(C).

9. Relator says that he has no other plain, speedy, or adequate remedy in the ordinary course of law.

WHEREFORE, relator prays that a writ of mandamus be issued against the respondent compelling him to forthwith allow relator to inspect and/or make copies of the contents of the personnel file of M. Daniels. Relator

further prays that he be awarded his costs, expenses, and reasonable pro se attorney's fees.

/S/
HENRY J. FANT, pro se
P. O. Box 14833
Cleveland, Ohio 44114

P. O. Box 14833

Cleveland, Ohio 44114

May 30, 1989

Benny Bonanno, Clerk
Cleveland Municipal Court
1200 Ontario Street
Cleveland, Ohio 44113

RE: Request for Public Record R.C 149.43(B)

Dear Clerk:

Request is hereby made for permission to inspect and/or make copies of the personnel file of M. Daniels of the Small Claim Division.

Kindly take notice that there shall not be a second nonjudicial request but instead, a mandamus complaint shall be filed to compel compliance with Section 149.43 of the Ohio Revised Code, if necessary.

Very truly yours,

/S/
HENRY J. FANT

CERTIFIED MAIL#P829372838

Exhibit A

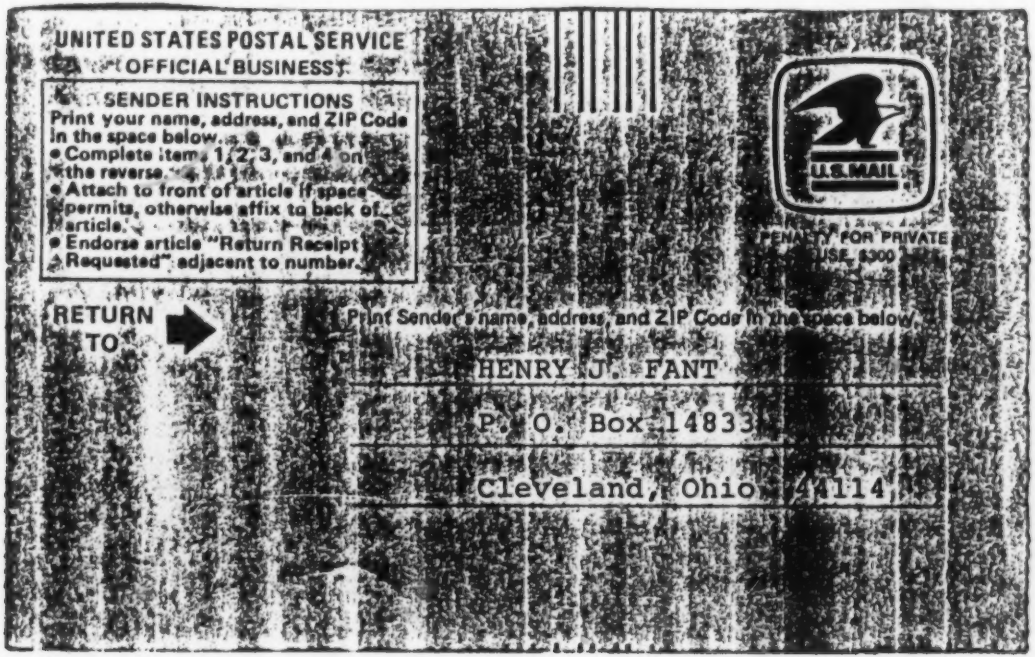
UNITED STATES POSTAL SERVICE
OFFICIAL BUSINESS
SENDER INSTRUCTIONS
Print your name, address, and ZIP Code in the space below.
• Complete item 1, 2, 3, and 4 on the reverse.
• Attach to front of article if space permits, otherwise affix to back of article.
• Endorse article "Return Receipt Requested" adjacent to number.
U.S. MAIL
PENALTY FOR PRIVATE USE, $300
RETURN TO
Print Sender's name, address, and ZIP Code in the space below.
HENRY J. FANT
P. O. Box 14833
Cleveland, Ohio 44114

Exhibit B

SENDER: Complete items 1 and 2 when additional services are desired, and complete items 3 and 4.
Put your address in the "RETURN TO" space on the reverse side. Failure to do this will prevent this card from being returned to you. The return receipt fee will provide you the name of the person delivered to and the date of delivery. For additional fees the following services are available. Consult postmaster for fees and check box(es) for additional service(s) requested.

1. ☐ Show to whom delivered, date, and addressee's address. 2. ☐ Restricted Delivery.

3. Article Addressed to:

Benny Bonanno, Clerk
Cleveland, Municipal Court
1200 Ontario Street
Cleveland, Ohio 44113

4. Article Number
P 829 372 838

Type of Service:
☐ Registered ☒ Certified ☐ Express Mail
☐ Insured ☐ COD

Always obtain signature of addressee or agent and DATE DELIVERED.

5. Signature – Addressee
X

6. Signature – Agent
X

7. Date of Delivery
JUN 1 1989

8. Addressee's Address (ONLY if requested and fee paid)

PS Form 3811, Feb. 1986 DOMESTIC RETURN RECEIPT

APPENDIX D

IN THE SUPREME COURT OF OHIO

Case No. 89-1157

ORIGINAL ACTION IN MANDAMUS

HENRY J. FANT

Relator

vs.

BENNY BONANNO, CLERK
Cleveland Municipal Court

Respondent

ANSWER OF RESPONDENT
TO COMPLAINT FOR WRIT OF MANDAMUS

HENRY J. FANT
P. O. Box 14833
Cleveland, Ohio
44114

NICK TOMINO-0021132
Director of Law

GARY N. TRAVIS-0021853
Asst. Director of Law

JOSEPH J. JERSE-0013927
Asst. Director of Law

Room 106 - City Hall
601 Lakeside Avenue
Cleveland, Ohio 44114
(216) 664-2800

ATTORNEYS FOR RESPONDENT

IN THE SUPREME COURT OF OHIO

HENRY J. FANT, Relator, vs. BENNY BONANNO, CLERK Cleveland Municipal Court, Respondent.	)	CASE NO. 89-1157

ANSWER OF RESPONDENT TO COMPLAINT FOR WRIT OF MANDAMUS

Now comes the Respondent, Benny Bonanno, Clerk, Cleveland Municipal Court, by and through counsel, and for his Answer to Relator's Complaint for Writ of Mandamus state as follows:

1. Denies the allegations of paragraph 1 of the Complaint.

2. In response to paragraph 2 of the Complaint, admits that Benny Bonanno is the Clerk of the Cleveland Municipal Court, but denies the remaining allegations contained therein.

3. Admits the allegations of paragraph 3 of the Complaint.

4. Admits that a member of Respondent's staff eventually received correspondence from Relator, a true copy of which is attached hereto as Exhibit A, and denies the remaining allegations of paragraph 4 of the Complaint.

5. Denies the allegations of paragraph 5 of the Complaint.

6. Admits the allegations of paragraph 6 of the Complaint.

7. Admits the allegations of paragraph 7 of the Complaint.

8. Denies the allegations of paragraph 8 of the Complaint.

9. Denies the allegations of paragraph 9 of the Complaint.

FIRST AFFIRMATIVE DEFENSE

10. The Complaint fails to state a claim upon which relief can be granted.

SECOND AFFIRMATIVE DEFENSE

11. The issues set forth in the Complaint are moot.

THIRD AFFIRMATIVE DEFENSE

12. Relator has an adequate remedy at law.

Respectfully submitted,

NICK TOMINO - 0021232
Director of Law

By: /S/
GARY N. TRAVIS-0021132
Asst. Director of Law

By: /S/
JOSEPH J. JERSE-0013927
Asst. Director of Law

Room 106 - City Hall
601 Lakeside Avenue
Cleveland, Ohio 44114
(216) 664-2800

ATTORNEYS FOR RESPONDENT

CERTIFICATE OF SERVICE

A copy of the foregoing Answer of Respondnet to Complaint for Writ of Mandamus was sent by regular U. S. mail, postage prepaid, this 4th day of August, 1989, 1989, to:

Henry J. Fant, pro se
P. O. Box 14833
Cleveland, Ohio 44114

/S/
GARY N. TRAVIS
Asst. Director of Law

P. O. Box 14833

Cleveland, Ohio 44114

May 30, 2989

Benny Bonanno, Clerk
Cleveland Municipal Court
1200 Ontario Street
Cleveland, Ohio 44113

RE: Request for Public Record R.C.149.43(B)

Dear Clerk:

Request is hereby made for permission to inspect and/or make copies of the personnel file of M. Daniels of the Small Claim Division.

Kindly take notice that there shall not be a second nonjudicial request but instead, a mandamus complaint shall be filed to compel compliance with Section 149.43 of the Ohio Revised Code, if necessary.

Very truly yours,

/S/
HENRY J. FANT

CERTIFIED MAIL #P829372838

Exhibit A

APPENDIX E

IN THE SUPREME COURT OF OHIO

HENRY J. FANT, Relator, vs. BENNY BONANNO, CLERK Cleveland Municipal Court, Respondent.	:	CASE No. 89-1157 BRIEF OF RELATOR

ORIGINAL ACTION IN MANDAMUS

HENRY J. FANT
P. O. Box 14833
Cleveland, Oh. 44114

GARY N. TRAVIS
Asst. Director of Law
Department of Law
Room 106 - City Hall
601 Lakeside Avenue N.E.
Cleveland, Ohio 44114

Attorney for Respondent

FILED
AUG 21 1989
MARCIA J. MENGEL CLERK
SUPREME COURT OF OHIO

STATEMENT OF FACTS

This is an original action in mandamus filed on July 5, 1989 by relator Henry J. Fant seeking to compel the respondent Benny Bonanno to furnish copies of public records to relator at costs pursuant to §149.43(B) of the Ohio Revised Code.

The respondent has not made an appearance in this action. However, by transmittal letter date August 4, 1989, counsel for respondent Bonanno transmitted to relator what counsel say is "the entire personnel file of Michele Daniels, with ... the following items redacted for the personal safety and privacy of M. Daniels: the social security number, the W-4 tax form, home addresses and telephone numbers, and the P.E.R.S. personal history form." (Exhibit A)

By letter dated August 11, 1989, counsel for the respondent was given an opportunity to reconsider his position in respect to

the residential address of Michele Daniels. As of this date, relator has not received a reply to said letter. (Exhibit B)

Proposition of Law

"Public record" means any record that is kept by any public office, including, but not limited to, state, county, city, village, township, and school district units, except medical records, records pertaining to adoption, probation, and parole proceedings records pertaining to actions under section 2151.85 of the Revised Code and to appeals of actions arising under that section, records listed in division (A) of section 3107.42 of the Revised Code, trial preparation investigatory records, and records the release of which is prohibited by state or federal law. R. C. 149.43(A)(1).

Pursuant to §1901.32(B) of the Ohio Revised Code, "In the cleveland municipal court, the chief clerk and all deputy clerks are in the classified civil service of the city of Cleveland. *** Upon demand of the clerk (Benny Bonanno), the civil service commission of the city of Cleveland shall certify a list of those eligible for the position of deputy clerk."

A condition of employment in the classified civil service of the city of Cleveland is residency unless expressly exempt by ordinance or state law. No such exemption apply

to Michele Daniels, a deputy clerk and the subject of this complaint.

The only issue to be determined by this court is whether or not the items redacted by opposing counsel are public records excluding the social security number and the tax form.

> "A governmental body refusing to release records has the burden of proving that the records are excepted from disclosure by R. C. 149.43."

State, ex rel. Natl. Broadcasting Co., v. Cleveland (1988), 38 Ohio St.3d 79, paragraph 2 of the syllabus.

CONCLUSIONS

Relator says that the residential address of deputy clerk Michele Daniels is public record subject to disclosure. The respondent have not shown that the records he redacted are excepted from disclosure by R. C. 149.43 or a federal or state law.

Respectfully submitted,

/S/

(20a) HENRY J. FANT,
P. O. Box 14833
Cleveland, Ohio 44114

CERTIFICATE OF SERVICE

A true copy of the foregoing brief of relator was mailed by first-class U. S. mail with postage fully prepaid thereon this 20th day of August , 1989 to Gary N. Travis, Assistant Director of LaW, Room 106, City Hall, 601 LAKESIDE Avenue, N.E., Cleveland, Ohio, 44114.

/S/
HENRY J. FANT

CITY OF CLEVELAND

GEORGE V. VOINVICH, MAYOR

DEPARTMENT OF LAW

NICK TOMINO

DIRECTOR

ROOM 106 . CITY HALL
601 LAKESIDE AVENUE N.E.
CLEVELAND, OHIO 44114
(216) 664-2800

August 4, 1989

Henry J. Fant
P. O. Box 14833
Cleveland, Ohio 44114

Re: Henry J. Fant v. Benny Bonanno, Clerk
Supreme Court of Ohio Case No.89-1157

Dear Mr. Fant:

As you know, the Clerk of the Cleveland Municipal Court has not failed to make available for inspection and/or copying the personnel file of employee Michele Daniels.

Nonetheless, for your convenience you will find enclosed in response to your request the entire personnel file of Michele Daniels, with only the following items redacted for the personal safety and privacy of Ms. Daniels: the social security numbers, the W-4 tax form, home addresses and telephone numbers and the P.E.R.S. personal history form.

Exhibit A

If you have any questions, please direct them to the undersigned.

Very truly yours,

/S/
Gary N. Travis
Asst. Director of Law

GNT/mk

enclosure
4211U

P. O. Box 14833
Cleveland, Ohio 44114

August 11, 1989

RE: Fant v. Bonanno
Case No. 89-1157

Gary N. Travis, Esq.
Assistant Director of Law
Department of Law
Room 106 . City Hall
601 Lakeside Avenue N.E.
Cleveland, Ohio 44114

Dear Counselor:

This will acknowledge your letter of August 4, 1989 together with the records of Michele Daniels.

No, I do not know " ... the Clerk of the Cleveland Municipal Court has not failed to make available for inspection and/or copying the personnel file of employee Michele Daniel."

What I do know is that Benny Bonanno failed to make a timely reply to my certified mail request for public records as documented by the record. (Complaint, Exhibits A and B)

Therefore, contrary to what you do subsequently to the controlling fact, respondent Bonanno has defaulted upon the command of §149.43 of the Ohio Revised Code. Moreover, you are in error in your belief that you may conceal the residential address of a public employee. The court shall be requested to determine what records are exempt from public disclosure if that be your desire.

Exhibit B

Please advise.

Very truly yours,

/S/
HENRY J. FANT